

Opinion No. 51-5460

November 23, 1951

BY: JOE L. MARTINEZ, Attorney General

TO: Honorable Beatrice B. Roach Secretary of State Santa Fe, New Mexico

{*169} This is in reply to your letter of October 26, in which you ask the interpretation of the meaning of Section 11-103, N.M.S.A. 1941, concerning retention by the Secretary of State of the fees received for issuance of commissions to Notaries Public.

As you have no doubt noted, the compilers of the 1941 N.M.S.A. have set apart in parenthesis the language "(which shall be retained by the secretary)." In a footnote to the section they state:

"The phrase enclosed in parenthesis is no longer operative because of Const., art. 5, § 12."

The constitutional provision referred to is that which sets forth the salaries of the constitutional officers of the state. The language which the compiler undoubtedly believes to have affected the law as to retention of fees by the Secretary of State is:

"The compensation herein fixed shall be full payment for all services rendered by said officers and they shall receive no other fees or compensation whatsoever."

If the only possible interpretation that could be placed on the language "which shall be retained by the secretary" is that the Secretary of State is thereby entitled to keep the money for herself as compensation or payment, then I would agree with the compiler that the provision was a nullity for it would be contrary to a specific prohibition in our Constitution.

I cannot agree that there is only this one possible interpretation. It is my opinion that the language concerned, "retention of fees", is wholly operative and does not contravene any constitutional provision. The language which the compilers state to be a nullity was included in the Territorial Laws of 1909 as Chapter 55. Subsequent to the adoption of the Constitution the same language was retained and in effect re-adopted in 1915 by its inclusion in the compiled laws as adopted by the Legislature. The same language was then continued and again re-adopted in the 1929 code of laws by the Legislature.

There is a basic presumption that the Legislature intended its enactments to be for constitutional purposes and within constitutional bounds. In interpreting statutes the meaning must always be sought which will bring the enactment within the bounds of constitutionality where it is possible to do so.

Because of the re-adoption of the language of § 11-103 by the Legislature on two different occasions since the adoption of the Constitution it must be presumed that the Legislature intended the language of law to be as stated. The only possible interpretation which can be made of the language "which shall be retained by the secretary" not in conflict with the Constitution is to find that the Legislature intended the Secretary of State to retain the fees so collected for a logical and legal purpose. The fees are paid for the issuance of the Notaries' commissions and it must be presumed that the fees so collected are to cover the expense of carrying out the purposes of the act.

It is my opinion that the Secretary of State is, by the provisions of § 11-103 N.M.S.A., 1941 Compilation, authorized to retain the fees {*170} collected for the issuance of Notary Public commissions. The funds so collected must be utilized to carry out the purposes of the act, which includes the issuance of commissions, maintenance of records and the sending of notices and furnishing applications to Notaries Public or applicants for commissions.

The funds collected by the Secretary of State must be paid into the State Treasury as required by law for all public funds. They should there be credited to the Secretary of State to be used for administering the laws as to Notaries Public.

The employment of this fund by the Secretary of State will be subject to all of the requirements of law with respect to approval as a part of the department's budget by the State Board of Finance. This money must be disbursed as are other funds of the Secretary of State, by warrants of the State Auditor drawn upon the Treasurer of the State and based upon itemized vouchers submitted by the Secretary of State.

I trust that this will answer your inquiry fully.